IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.2759 OF 1992.

Yadavrao Ganpatroa Raje : Petitioner

versus

Tahsildar (Stamp and
Valuation) Office of Deputy
Collector, Stamp & Valuation
Nasik & ors. : Respondents.

Mr.P.J.Thorat i/by Mr.V.A.Thorat for the petitioner.

Mr.S.K.Chinchalikar, AGP, for the Respondent Nos.1 to 3.

CORAM : D.G.DESHPANDE, J.

DATED : October 11, 2006.

JUDGMENT :

1. Heard learned advocate Mr.Thorat for the petitioner and learned AGP Mr.Chinchalikar for the respondents/State.

2. By this petition, the petitioner has challenged Notice dated 21st May 1992 (Exhibit-C) which is pursuant to the provisional order of the same date by Respondent No.1. The petitioner has challenged validity of Section 32-A of the Bombay Stamp Act (Determination of True Market Value of Property) Rules 1981 and certain other provisions of the said Act. However, learned advocate Mr.Thorat for the petitioner conceded that this issue was decided by court and it was no-longer open to him to challenge the same again. Therefore, he restricted himself to other prayers viz. legality and validity of the notice dated 21st May 1992 (Exhibit C).

3. The petitioner has purchased some agricultural land at village Dindori Taluka Dindori Dist.Nashik. The agreement for sale was registered on 23.10.1980 for Rs.62,000/- out of

which Rs.7000/- was paid on the date of the agreement. Thereafter a sale deed came to be executed in favour of the petitioner on 15.10.1981 on payment of balance of consideration of Rs.55,000/-. Whatever stamp duty was payable on this sum shown in the sale deed was paid by the petitioner along with registration fee etc. The sale deed was for Rs.62,000/- However, for the first time on 14.10.1988, the Sub Divisional Officer, Nashik issued notice to the petitioner under the Bombay Stamp (Determination of True Market Value of Property) Rules 1981 calling upon him to make his submissions for the contention of the Sub Divisional Officer that the property which was the subject of the sale was not properly valued and no proper stamp duty was paid. The petitioner gave reply to this notice on 21.11.1988. However, thereafter nothing was done by the Sub Divisional Officer. Then on 21st May 1992 the Deputy Collector, Stamp Valuation, Nashik, issued a fresh notice under Rule 3(5) of the aforesaid Rules and also communicated the provisional order he had passed in this regard and, then called upon the petitioner to show cause if he is not agreeable with the provisional order. It is this subsequent notice dated 21st

May 1992 and the provisional order of the same date that is challenged in the present petition.

4. Mr.Thorat, the learned advocate appearing for the petitioner, relied upon the judgment of this Court in the case of **Sunil Banwarilal Loiya v/s. State of Maharashtra and another** reported in **(2005(6) Bom C.R.419)** in support of his contention that before passing the provisional order, the collector has to follow the procedure prescribed by the aforesaid Rules. He drew my attention, in particularly, to the relevant portion of para 7 which runs as under:-

> "3. Procedure to be followed by the Collector of the District for determining true market value of property under sections 31 and 32-A.
>
> Where any instrument of the nature described in sub-section (3) of section 31, or as the case may be, in sub-section (1) of section 32-A -
>
> (a) is referred to the Collector of the District under sub-section

(3) of section 31 or under sub-section (1) of section 32-A for determination of the true market value of the property which is the subject matter of such instrument and the proper duty payable thereon, or

(b) where the Collector of the District on his own proposes to examine the instrument under sub-section (3) of section 32-A for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of the instrument and the proper duty payable thereon.

the collector of the District shall hold an enquiry and for that purpose follow the following procedure namely :-

(1) As soon as may be, after receipt of the reference or his decision

to proceed in the matter on his own, the Collector of the District shall issue a notice in form 1, to every person by whom, and to every person in whose favour, the instrument is executed requiring every such person to submit, within thirty days from the date of service of notice upon him, his representation in writing, along with the appropriate forms mentioned in clause (2) duly filled in, to show that the market value of the property set forth in the instrument is the true market value, to the best of his knowledge.

(2) Where the notice is to be served on a person by whom the instrument has been executed, the Collector of the District shall, along with such notice forward any one or more of the following forms having regard to the nature

and location of the property which is the subject matter of the instrument and require such person to fill in the same in all respect and to forward the same to him along with his representation, namely:-

(a) in a case of municipal and Corporation areas, Form II;

(b) in the case of agricultural land in a non-municipal area, Form III;

(c) in a case of non-agricultural land in a non-acgiruclltural land, house sites, buildings and structures in a non-municipal area, form IV;

Where the subject-matter of the instrument relates to agricultural land comprising different survey numbers or their sub-divisions, or to different

piece of properties, separate forms for survey number and sub-division and each such piece of property shall be forwarded.

(3) The Collector of the District may, if he thinks fit so to do, record the statement of the person on whom the notices has been served and may for the purpose of enquiry

(a) Call for any information or record from any public office, officer or authority under the State Government or any local authority;

(b) record statement from any member of the public, officer or authority under the State Government or any local authority."

5. Mr.Thorat, the learned advocate appearing

for the petitioner, therefore, contended that when the State issued first notice to the petitioner on 14.10.1988 (Exhibit-B to the petition) through the Sub Divisional Officer, Nashik Sub Division, Nashik, the petitioner gave reply to that notice. But no order was passed thereafter for four years and, in the year 1992 fresh notice was issued along with provisional order. He contended that as per the Rules, referred to and reproduced above, the procedure was not followed before passing the provisional order.

6. The State has not filed any reply to this petition. Apart from that the learned APP Mr.Chinchalikar could not point out how the provisional order dated 21st May 1992 and the subsequent notice of the same date was after following the procedure prescribed as reproduced above. In this back ground, the petition has to be allowed and the matter has to be remanded to the Deputy Collector for proceeding further in the notice dated 21st May 1992. Hence I pass the following order :-

:ORDER:

The petition is allowed.

The impugned valuation dated 21st May 1992 by the Deputy Collector, Nashik is set aside.

Notice dated 21st May 1992 to be proceeded further by the said Deputy Collector after following procedure prescribed under the Bombay Stamp (Determination of True Marked Value of Property) Rules 1981 and other relevant provisions.

Rule is discharged.

The petitioner to appear before the Deputy Collector, Nashik with the certified copy of this order on 9th November at 11.00 a.m.. Then the Deputy Collector to proceed further and decide the notice as expeditiously as possible.

[D.G.DESHPANDE, J.]